

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERON WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED  
February 21, 2003

No. 234928  
Wayne Circuit Court  
LC No. 00-009269

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession of a firearm during the commission of a felony, MCL 750.227b, and second-degree murder, MCL 750.317. Defendant was sentenced to twenty-five to fifty years' imprisonment for the second-degree murder conviction and a consecutive sentence of two years' imprisonment for the felony-firearm conviction.<sup>1</sup> We affirm.

Defendant's first issue on appeal is that the prosecution committed misconduct by shifting the burden of proof to defendant during rebuttal closing argument. We disagree. Generally, a claim of prosecutorial misconduct is reviewed de novo, but the trial court's factual findings are reviewed for clear error. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). We review claims of prosecutorial misconduct case by case, examining the remarks in context, to determine whether the defendant received a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). The propriety of a prosecutor's remarks depends on all the facts of the case. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

The prosecution told the jury in her closing rebuttal argument the following:

The story that defendant tells does not comport with the physical evidence.  
And if you notice, and I wrote it down when counsel said it, she said it is

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<sup>1</sup> We note that our review of defendant's convictions is hampered by the failure of Wayne County Prosecuting Attorney Michael E. Duggan to file a brief or otherwise defend this appeal.

reasonable to assume that this happened the way defendant said. And I'm going to show you this. Reasonable doubt is not based on maybe, it's not based on possibilities, and it is not based on assumptions. She said, well, let's assume defendant's story happened. That's not what reasonable doubt is. You have to have concrete evidence that it happened the way the defendant says it happened, and the concrete evidence goes just to the opposite.

A prosecutor's arguments regarding the credibility of the witnesses and evidence presented by a defendant do not shift the burden to the defendant to prove his innocence, but rather, question the reliability of the testimony and evidence presented. *People v Fields*, 450 Mich 94, 107; 538 NW2d 356 (1995). A prosecutor is permitted to argue the evidence and all reasonable inferences from the evidence as it relates to the prosecution's theory of the case. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998). A prosecutor may argue that certain evidence is uncontradicted and may contest evidence presented by the defendant. *People v Reid*, 233 Mich App 457, 477; 592 NW2d 767 (1999).

The prosecutor did not impermissibly shift the burden of proof during rebuttal argument. The prosecution was only insinuating that, contrary to defense counsel's closing argument, there was no reasonable doubt. Arguments regarding the weight of the evidence and credibility of the witnesses do not shift the burden to the defendant to prove his innocence, but rather, question the reliability of the testimony and evidence presented. *Fields, supra* at 107. Arguing that evidence does not exist attacks the credibility of the theory presented by the defense, rather than shifting the burden to defendant. *Id.* at 106. The prosecution was merely arguing that evidence did not exist for defendant's self-defense theory. "[W]here a defendant . . . advances, either explicitly or implicitly, an alternate theory of the case that, if true, would exonerate defendant, comment on the validity of the alternate theory cannot be said to shift the burden of proving innocence to the defendant." *Id.* at 115. Defendant raised the self-defense theory through his own statement given to the police and through Nicole Brooks' testimony at trial. Therefore, defendant advanced this theory, and the argument on the inferences did not shift the burden to defendant. The prosecutor did not require defendant to disprove an element of the charged offense. *Id.* at 113. The prosecution did not assert that defendant was required to prove anything or to produce evidence, but rather, merely argued that the evidence produced did not support defendant's theory. Accordingly, there was no error requiring reversal.

Defendant's second issue on appeal is that the prosecution committed misconduct by its denigration of defense counsel and by improperly appealing to religion during rebuttal argument. We disagree. To preserve for appeal a challenge to statements made by the prosecution, a timely objection to those statements must be made. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001). No objections relating to the alleged denigration of defense counsel or the reading of the biblical text were raised during the prosecution's closing or rebuttal arguments, and therefore, this issue has not been preserved.

An unpreserved issue is evaluated for a plain error affecting the defendant's substantial rights. *Carines, supra* at 763-764; *Aldrich, supra* at 110. To avoid forfeiture under the plain error rule, the defendant must show that the error was plain, i.e., clear and obvious, and affected the defendant's substantial rights by prejudicing the outcome of the proceedings. *Carines, supra* at 763-764. Reversal is warranted only where the plain error resulted in the conviction of an

innocent defendant or if the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* “No error requiring reversal will be found if the prejudicial effect of the prosecutor’s comments could have been cured by a timely instruction.” *Schutte, supra* at 721.

This Court reviews claims of prosecutorial misconduct case by case, examining the remarks in context, to determine whether the defendant received a fair and impartial trial. *Bahoda, supra* at 266-267. A prosecutor cannot question a defense counsel’s veracity. *People v Wise*, 134 Mich App 82, 101-102; 351 NW2d 255 (1984). The prosecution may not attack defense counsel in a way that suggests to the jury that defense counsel intentionally sought to mislead the jury. *Watson, supra* at 592. However, a prosecutor can point out the deficiencies in a defendant’s case. *People v Howard*, 226 Mich App 528, 544-545; 575 NW2d 16 (1997). The prosecution need not use the blandest possible terms to do so. *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996).

During the prosecutor’s rebuttal closing argument, the prosecutor made the following statements to the jury:

She’s sort of attacking everyone in this case, she attacks. She finds something snotty and nasty to say about everybody.

\* \* \*

What I’m saying is, by her focusing your attention on those extraneous things, she’s not focusing your attention on the defendant’s nonsensical statement, she’s not focusing your attention to the medical evidence.

The above comments were proper and did not denigrate defense counsel. Viewed in context, the prosecutor did not argue that defense counsel lied or was trying to intentionally mislead the jury with regard to the facts. The prosecutor was merely pointing out the weaknesses and deficiencies in defendant’s case. Defense counsel questioned the credibility of the prosecution’s witnesses, and the prosecutor asked the jury to look at the evidence beyond the credibility of the witnesses. Nothing can be construed as denigration of defense counsel, and thus, no prosecutorial misconduct occurred. Therefore, there was no plain error that affected defendant’s substantial rights.

Defendant also argues that the prosecutor improperly appealed to religion by citing biblical text in her closing argument. During closing argument, the prosecutor made the following statements:

There’s a verse in the Bible, Proverbs I think it’s 23:1 that says, “The wicked flee when no man pursueth, but the righteous are as bold as a lion.” Well he flees, he fled when nobody is pursuing him. He fled and hid himself until he finally turned himself in with an attorney.

A prosecutor may not appeal to the jury’s religious convictions in calling for a defendant’s conviction, and thus, inflame the jury’s passions and fears. *People v Rohn*, 98 Mich App 593, 597-598; 296 NW2d 315 (1980), overruled on other grounds *People v Perry*, 460 Mich 55, 64;

594 NW2d 477 (1999). However, references, by way of illustration, to principles of divine law or biblical teachings may properly be used as an illustration. *People v Mischley*, 164 Mich App 478, 483; 417 NW2d 537 (1987). Remarks by the prosecutor should not be held prejudicial if they are made in good faith and, when fairly construed, they do not appear to have prejudiced the jury against the defendant. *People v Wilson*, 163 Mich App 63, 65; 414 NW2d 150 (1987).

The prosecutor's statement did not constitute an appeal to the jury's passions or prejudices to help secure a conviction on religious grounds. The defense was that defendant acted in self-defense in shooting and killing William Smith. Viewing the prosecutor's comments in context, she used the passage to illustrate that someone who killed in self-defense typically would have no reason to flee the scene of the incident. Moreover, that the fact that defendant fled made it more probable he was guilty. Thus, the comments were not made in an effort to appeal to the jurors' religious convictions and the prosecution's reference to biblical text, in response to defendant's claim of self-defense, neither deprived defendant of a fair trial nor constituted prosecutorial misconduct. In any event, even assuming improper prosecutorial comment, defendant has not shown that he was prejudiced to the extent that the error could not have been cured by a cautionary instruction. *Schutte, supra* at 721. Accordingly, no plain error existed that affected defendant's substantial rights.

Defendant's third issue on appeal is that the trial court denied defendant his right to allocution. We disagree. A defendant must object to the trial court's alleged interference with his right to allocution in order to properly preserve the issue for appeal. *People v Jones (On Rehearing)*, 201 Mich App 449, 452; 506 NW2d 542 (1993). Defendant did not object to the trial court's alleged interference with his right of allocution, so this issue is not properly preserved for appeal, and thus, will be reviewed for plain error affecting defendant's substantial rights. *Carines, supra* at 763-764.

MCR 6.425(D)(2)(c) provides that before imposing sentence, the trial court must "give the defendant . . . an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." MCR 6.425(D)(2)(c); *People v Petit*, 466 Mich 624, 627; 648 NW2d 193 (2002). Strict compliance with a defendant's right of allocution is required and the trial court must specifically ask the defendant if he wishes to address the court. *People v Wells*, 238 Mich App 383, 392; 605 NW2d 374 (1999). Failure to comply with this rule requires resentencing. *Wells, supra* at 383.

The record reveals that defendant was afforded his right to allocution. The trial court properly complied with MCR 6.425(D)(2)(c) by asking defendant if he had any comments to make on his behalf. Defendant began expressing to the court that he was acting in self-defense. At that point, the trial court briefly interrupted to advise defendant that the court was allowing him to make a statement about the sentence it should impose, rather than revisiting the trial. Defendant then stated, "I apologize. I'm through, man."

A single interruption of a defendant's allocution, when the defendant was otherwise allowed to speak, does not constitute a denial of his right. *People v Reeves*, 143 Mich App 105, 107; 371 NW2d 488 (1985); *People v Howell*, 168 Mich App 227, 236-237; 423 NW2d 629 (1988). The trial court did interrupt defendant, but afforded him the opportunity to continue speaking and to fully explain his concerns relevant to sentencing. However, defendant informed the trial court that he did not want to make any further statements. The court's brief interruption

did not violate defendant's right of allocution. Accordingly, the trial court did not commit plain error that affected defendant's substantial rights.

Defendant's fourth issue on appeal is that the prosecution improperly introduced evidence through a police officer that defendant failed to volunteer information and cooperate. We disagree. No objection was made at trial when the prosecution questioned Investigator Simon regarding how cooperative defendant was in turning information over to the police. Therefore, this issue has not been preserved for appeal and will be reviewed for plain error affecting defendant's substantial rights. *Carines, supra* at 763-764. A party waives review of admission of evidence which he introduced or which was made relevant by his own placement of a matter in issue. *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001); *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). Defense counsel raised the issue whether defendant had cooperated with the police, and defendant waived his right to appellate review of this issue by contributing to it by plan or negligence.

On cross-examination, defense counsel asked Investigator Simon various questions about defendant being cooperative with the police and addressed how defendant's statement was voluntary and how he had cooperated. On redirect, the prosecution began questioning Investigator Simon with regard to whether defendant submitted information that Brooks had taken pictures of defendant the prior day and whether defendant had turned over the clothing he was wearing on the night of the incident. The prosecution also asked if defendant voluntarily came to the police department or came to the police department to give a statement after the homicide section was out searching for him. Throughout this questioning, the prosecution asked Investigator Simon if defendant was still totally cooperative.

Once a defendant raises an issue, he opens the door to a full, and not just selective, development of the subject. *People v Allen*, 201 Mich App 98, 103; 505 NW2d 869 (1993). A matter can be put into issue by opening statement, cross-examination, or affirmative evidence. *People v Bates*, 91 Mich App 506, 510; 283 NW2d 785 (1979). The "prosecution is entitled to contest fairly evidence presented by a defendant." *Reid, supra* at 477. Defense counsel specifically interjected and raised the issue of defendant's cooperation with police during the cross-examination of Investigator Simon. Therefore, defendant placed the matter in issue by contributing to it by plan or negligence and has waived appellate review of the admission of the evidence. *Knapp, supra* at 378. Thus, there was no prosecutorial misconduct because the questioning was proper based on defendant opening the door. *Allen, supra* at 98. In any event, even if improper, defendant has not shown that he was prejudiced by the cross-examination of Investigator Simon to the extent that it could not have been cured by a cautionary instruction. *Schutte, supra* at 721. Accordingly, there was no plain error that affected defendant's substantial rights.

Defendant's fifth issue on appeal is that he was denied a fair trial when the prosecution introduced unrelated prior bad acts evidence. We disagree. The admission of prior bad acts evidence must be objected to at trial in order to preserve the issue on appeal. *Carines, supra* at 763-764; *People v Hawkins*, 245 Mich App 439, 447; 628 NW2d 105 (2001). No objection was made at trial when the prosecutor began questioning Officer Gelso about receiving information regarding a carjacking and possession of a weapon by defendant. Therefore, this issue has not been preserved for appeal and will be reviewed for a plain error affecting defendant's substantial rights. *Carines, supra* at 763-764; *Hawkins, supra* at 447. As previously noted, a party waives

review of admission of evidence that he introduced or was made relevant by his own placement of a matter in issue. *Knapp, supra* at 378. Defense counsel raised the issue of the carjacking on her cross-examination of Harris, and thus, defendant waived his right to appellate review of this issue by contributing to it by plan or negligence.

Defendant argues that at trial the prosecution introduced bad acts evidence that should not have been admitted. On cross-examination of Harris, defense counsel twice brought out that there was an alleged carjacking by defendant on July 4, 2000. The prosecution, when examining Officer Gelso, asked him questions about reports of defendant possessing a weapon and being involved in a carjacking on July 4, 2000.

The use of a defendant's prior bad acts as character evidence, except as allowed by MRE 404(b), is improper because of the danger of conviction based on a defendant's history of misconduct. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998). MRE 404(b)(1) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

MRE 404(b)(1) is an inclusionary rule that is not violated unless evidence is offered to establish the criminal propensity of an individual to show that he acted in conformity therewith. *People v VanderVliet*, 444 Mich 52, 64-65; 508 NW2d 114 (1993). Therefore, “[e]vidence of other crimes, wrongs, or acts is admissible under MRE 404(b) if the evidence is ‘(1) offered for a proper purpose and not to prove the defendant’s character or propensity to commit the crime, (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh danger of unfair prejudice, MRE 403.’” *People v Aguwa*, 245 Mich App 1, 7; 626 NW2d 176 (2001), quoting *People v Ho*, 231 Mich App 178, 185-186; 585 NW2d 357 (1998). Generally, the prosecution must provide reasonable notice of its intent to present bad acts evidence. MRE 404(b)(2); *Ullah, supra* at 674.

Defendant was charged with felony-firearm, MCL 750.227b, and second-degree murder, MCL 750.317. It is undisputed that Smith was shot by a gun. Evidence is not subject to MRE 404(b) analysis merely because it discloses a bad act; rather, bad acts can be relevant as substantive evidence, admissible under MRE 401, without regard to MRE 404. *VanderVliet, supra* at 64; *People v Hall*, 433 Mich 573, 580, 583-584 (Boyle, J.), 588-589 (Brickley, J.); 447 NW2d 580 (1989). “Evidence of a defendant’s possession of a weapon of the kind used in the offense with which he is charged is routinely determined by the courts to be direct, relevant evidence of his commission of that offense.” *Hall, supra* at 580-581. The fact that a statement may also show a separate act, wrong, or crime does not alone bring the evidence within MRE 404(b). *Id.*

The testimony from Officer Gelso was direct and probative on the issue whether defendant was in possession of a gun. The evidence tended to prove that defendant possessed a

gun on the day of the shooting of Smith. Therefore, evidence that defendant was “flashing a gun” was not “other acts” evidence under MRE 404(b), and the notice requirement of MRE 404(b)(2) only applies to “other acts” evidence that the prosecutor intends to introduce at trial. *VanderVliet, supra* at 52. In addition, the evidence was highly probative that defendant was in possession of a gun when the alleged charged crimes occurred. Given the very high value of the evidence concerning defendant’s possession of a gun, it cannot be concluded that the probative value was substantially outweighed by any risk of unfair prejudice to defendant. MRE 403; *People v Mills*, 450 Mich 61, 75; 537 NW2d 909, mod on other grounds 450 Mich 1212 (1995). Accordingly, there was no plain error affecting defendant’s substantial rights.

On cross-examination of Harris, defense counsel twice brought out that on July 4, 2000, there was an alleged carjacking by defendant. Defense counsel specifically interjected and raised the issue of a carjacking allegation involving defendant. Therefore, defendant placed the matter in issue by contributing to it by plan or negligence and has waived appellate review. *Knapp, supra* at 378; *Griffin, supra* at 46.

Defendant’s sixth issue on appeal is that he was denied the effective assistance of counsel. We disagree. Defendant neither moved for a new trial nor did he seek an evidentiary hearing before the trial court. Thus, the issue was not fully preserved for appeal and we must review the issue on the basis of the existing record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To establish a claim of ineffective assistance of counsel, the defendant must show that counsel’s performance was deficient and that there is a reasonable probability that, but for the deficiency, the result would have been different. *People v Pickens*, 446 Mich 298, 329; 521 NW2d 797 (1994); *Snider, supra* at 423-424. The deficiency must be prejudicial to the defendant. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Furthermore, the defendant must overcome the presumption that the challenged action is sound trial strategy. *Id.* at 58. Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). “Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law.” *Id.* at 579. The court must first find the facts and then decide whether those facts constitute a violation of the defendant’s constitutional right to effective assistance of counsel. *Id.* The trial court’s factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.*

Generally, to establish ineffective assistance of counsel, a defendant must show that trial counsel made errors so serious that counsel was not functioning as counsel guaranteed by the Sixth Amendment and that this deficient performance prejudiced defendant, in that defense counsel’s errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable. *Id.* at 582. In applying the test, there is a strong presumption that defense counsel’s conduct is within the range of reasonable professional assistance. *Id.* at 578.

First, defendant alleges that defense counsel should have objected to the prosecution’s questioning of Investigator Simon regarding defendant’s failure to volunteer information when he was interrogated by the police. As discussed, *supra*, the prosecution did not engage in any improper redirect examination of Investigator Simon. Defense counsel specifically interjected and raised the issue whether defendant cooperated with police during cross-examination of

Investigator Simon. Therefore, defendant placed the matter in issue, and once a defendant raises an issue, he allows a full, and not just selective, development of the subject. *Allen, supra* at 103. An objection by defense counsel for exclusion of this evidence would have been meritless. “A trial attorney need not register a meritless objection to act effectively.” *Hawkins, supra* at 457. Therefore, defense counsel was not ineffective in failing to object to the prosecution’s redirect examination of Investigator Simon regarding how cooperative defendant was. Furthermore, it may have been defense counsel’s strategy not to object to the redirect examination of Investigator Simon so as not to call attention to the statements, and therefore, such action cannot be second-guessed on appeal. *Pickens, supra* at 344. Additionally, effective assistance of counsel is presumed and defendant has not proved otherwise. A de novo review of the record does not support the conclusion that defense counsel was ineffective by not objecting to the prosecution’s questioning of Investigator Simon.

Second, defendant alleges that defense counsel was ineffective when she failed to object to evidence concerning defendant’s association with guns and a carjacking. As we held, *supra*, the prosecution did not engage in any improper examination of Officer Gelso. Defense counsel specifically interjected and raised the issue of defendant’s involvement in an alleged carjacking, thus opening the door to a full, and not just selective, development of the subject. *Allen, supra* at 103. The evidence of defendant’s possession of a gun was proper substantive evidence that was not introduced for an improper purpose and, as previously discussed, was relevant and thus admissible. An objection by defense counsel for exclusion of this evidence would have been meritless. “A trial attorney need not register a meritless objection to act effectively.” *Hawkins, supra* at 457. Therefore, defense counsel was not ineffective in failing to object to the prosecution’s examination of Officer Gelso. Furthermore, regarding the testimony of Officer Gelso that defendant was flashing a gun, it may have been defense counsel’s strategy not to object so as not to call additional attention to the evidence, and therefore, such an action cannot be second guessed on appeal. *Pickens, supra* at 344.

Regarding the alleged carjacking incident, it appears from the record that the trial strategy was to show that Harris, Smith, and their “boys,” went after defendant with guns because he had carjacked one of them, thus giving Smith a motive to pull a gun on defendant and making defendant’s claim of self-defense more probable. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy or will it assess counsel’s competence with the benefit of hindsight. *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). Furthermore, defendant has failed to overcome the presumption that he received effective assistance of counsel. Based on the record, on a de novo review of this constitutional issue, defendant has not established the deficient performance and prejudice required to succeed on a claim of ineffective assistance of counsel. *LeBlanc, supra* at 579.

Defendant’s final issue on appeal is that he was denied a fair trial based on the prosecution’s improper impeachment of a non-alibi witness. We disagree. “To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal.” *Aldrich, supra* at 113; MRE 103(a)(1). Prosecutorial impropriety must be objected to at trial in order to preserve the issue on appeal. *Carines, supra* at 763-764; *Aldrich, supra* at 110. There was no objection to the prosecutor’s cross-examination of Brooks. Thus, the issue has not been preserved for appellate

review and will be reviewed for a plain error affecting defendant's substantial rights. *Carines*, *supra* at 763-764.

Defendant argues that he was denied a fair trial when the prosecution improperly impeached a non-alibi witness by asking Brooks why she had not gone to the police with certain information she testified to at trial. During the prosecution's cross-examination of Brooks, the following exchange took place:

Q. Just taking pictures to take pictures. You were doing things just to do things, how come you just didn't call the police?

A. I do not know. I can't answer that.

\* \* \*

Q. Well, let me put a suggestion in front of you. You didn't call the police because you did not want Sheron Williams to be caught?

A. I won't say that. I didn't call the police because I didn't have a phone till I got to the phone the next day. I called his mother, I left it up to his mother to take taken [sic] care of that. I was just there.

"On numerous occasions, this Court has held that the credibility of a witness may be attacked by showing that he failed to speak or act when it would have been natural to do so if the facts were in accordance with his testimony." *People v Martinez*, 190 Mich App 442, 446 ; 476 NW2d 641 (1991). "[A] prosecutor may cross-examine a non-alibi defense witness regarding his failure to come forward prior to trial with the information testified to at trial *if* the information is of such a nature that the witness would have a natural tendency to come forward with it prior to trial." *People v Emery*, 150 Mich App 657, 666; 389 NW2d 472 (1986) (emphasis in original), quoting *People v Perkins*, 141 Mich App 186, 196; 366 NW2d 94 (1985).

In the instant case, there was no error in the prosecution's questioning of Brooks regarding her failure to come forward with this evidence earlier because the "information is of such a nature that the witness would have a natural tendency to come forward with it prior to trial." *Emery*, *supra* at 666; *Perkins*, *supra* at 196. Brooks admitted to being close to defendant (he was her "godbrother"), and it was obvious she was aware of the charges against defendant from the fact she was at prior hearings. Being close to defendant, she would want to exculpate him. Brooks indeed testified that defendant immediately explained the situation to her as self-defense. This information, which would have provided a complete defense to the crime, if believed, was of such a nature that Brooks would have had a natural tendency to present it prior to trial. Thus, the trial court did not err in permitting this line of cross-examination. A review of the record reveals there was nothing improper in this line of questioning by the prosecution. Accordingly, defendant has failed to show a plain error that affected his substantial rights.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard Allen Griffin

/s/ Donald S. Owens